Access to Justice Technology Bill of Rights ("ATJ-TBoR")

Donald J Horowitz
Chair, Access to Justice Technology Bill of Rights Committee
Washington State Access to Justice Board
2101 Fourth Avenue, Suite 400
Seattle, WA 98121
djh@atjtechbillofrights.org
www.atjtechbillofrights.org

Recent and ongoing developments in information and communication technologies (ICT), and the use of such technologies pose significant challenges to full and equal access to the justice system. *Technology can provide increased pathways for access, but it can also create significant barriers*.

Access Issues:

Even before significant study was done, some simple examples of access possibilities and barriers emerged, including the following. ICT is creating opportunities for people to use their home or a nearby library branch or community center to initiate or respond to court or other legal requirements, communicate and exchange documents with their legal service provider or others associated with the legal system less expensively, using less time and effort, without having to travel to a central city, with less time away from work or other responsibilities. This can be especially important for the elderly, the disabled, persons with limited finances, and those who literally can't afford to miss time from work for reasons of money or jeopardizing their employment. Similarly, a person with limited mobility or hearing may be able to get information electronically about his rights as a tenant; a victim of domestic violence can learn on the Internet what she can do to protect herself, and in fact be able to start the legal process of doing so. Examples of such opportunities for enhanced access include use of web pages, e-mail, computer set-ups or kiosks in safe, publicly accessible places to learn about and use understandable legal information, on-line forms and electronic filing to make it easy to prepare and submit legal claims and responses to courts and administrative agencies, and video conferencing to erase barriers of distance and inaccessibility. The courts and other parts of the justice system may be able to operate more productively and less expensively, making records and information available and receive filings, fees, documents and information, all electronically. These are only beginning possibilities.

However, these very possibilities also create the risk of worsening old barriers or erecting new barriers to access and causing greater disparities. While the opportunities described above seem positive, these innovations assume access to a computer, reasonable proficiency at using the machines, the necessary software programs, reading capability, fluency in English, sufficient phone or cable and electricity availability and capacity and content that is understandable, relevant and usable. Without all of that, those with the means get further ahead and those without fall further behind in having the justice system work for them. The lack of equality gets greater, not less.

As a further example, it has been proposed, and in some cases already implemented, that some laws and regulations that govern us should only be published or available electronically – no more paper copies. This saves money for the government, but the content of the law that governs all of us is then available only selectively, access to essential information having been made more difficult for some sectors of society. Consider also a well-intentioned court-based electronic filing system which is available 24 hours per day and in various other ways gives priority treatment to

those who can use that system (those with a computer, an internet connection and the skill and capability to navigate what may be a complex software program) but not to those who do traditional in-person or paper filing.

There has already been some privatization of electronic court filing with associated fees, and additional consideration is being given to privatizing other traditionally public justice system functions such as storage, maintenance and access to court files and records, which functions may be rendered commercially viable by the use of electronic digitalization, maintenance, storage and search procedures. These practices and considerations anticipate that while the courts and some public agencies would not have to pay for these services, members of the public and those who assist or advocate for them would be charged. Without judging the desirability or lack thereof of any privatization, it is apparent that without careful and enforceable standards prerequisite to any privatization, critical parts and functions of the justice system could well become substantially and disparately inaccessible to many members and segments of the public with significant and damaging consequences.

The foregoing are but a few of the issues and problems that come readily to mind. Many others exist, some recognized, others awaiting study, discovery and solution.

Description of the Organization and History:
In 1994, the Washington State Supreme Court established the Access to Justice ("ATJ") Board to facilitate, enhance and safeguard access to the justice system. The ATJ Board was given the mission to promote and facilitate equal access to justice, and develop and implement policies and initiatives that will enhance, improve and strengthen access to justice. The Court also gave the Board the task of developing and implementing new programs and innovative measures to expand access to justice in Washington.

In recent years, the ATJ Board came to believe that recent and ongoing developments in information, communication and associated technologies, including the Internet, and the current and future use of such technologies pose significant challenges to full and equal access to the justice system. It bears repeating: *Technology can provide increased pathways for access, but it can also create significant barriers*. Because the ATJ Board is dedicated to ensuring that barriers to accessing the justice system are avoided, eliminated or minimized, and that pathways are increased or maximized, the Board undertook to consider what could and should be done. The Board understood that technological innovations and changes and their application to and adoption into the various core systems in society as a whole, and into the justice system particularly, are still in their early stages, and that as yet only a few waves have been felt. However, the Board also recognized that a great volume of change, indeed a transformation, is building and will inevitably and significantly impact access to and the quality of the system. *The Board concluded that in the absence of careful deliberation, planning, preparation and action, these enormous oncoming changes could have the destructive effects of a tsunami tidal wave, but on the other hand if this great energy of change were prepared for and constructively channeled and utilized, the public and the justice system would not only avoid significant damage but would likely garner substantial benefits for all persons to a more accessible, equitable and effective system.*

The Board determined that an access to justice technology bill of rights is required. This body of fundamental principles would apply to all persons and groups, including but not limited to users and potential users of the justice system and those working in or in association with the justice system. As a result, this "ATJ-TBoR" initiative was created.

<u>Goals and Process:</u>
The goal of the ATJ-TBoR project is to develop, adopt and implement an Access to Justice Technology Bill of Rights premised on relevant principles in the United States and Washington State Constitutions and the core values of our society.

But what this initiative is really engaged in is not just about the justice system, as essential as that is and although that is where we start and are here focused. This initiative is at its core about access to and enabling of all the indispensable opportunities and services that every human being needs and should have: justice, health care, basic subsistence, economic opportunity and the like. It is about meaningful access, relevant access, access in the community and wherever else access needs to be. It is about the use of technology, but also about the use of any other tools that can help provide or enhance such meaningful access to those essential opportunities and services. And it is not just about Washington, although that is where we start; it is about the quality of life of every person in the world. *It is ultimately about values and delivering on those values.*

It is also very importantly about public policy. Our method – a proactive rather than reactive engagement in a multi-disciplinary, deliberative, consumer-respectful process and approach to the emerging issues, opportunities and problems brought about by new technologies -- has to date been all too rare, and may itself be an example to follow more generally in formulating public policy around the subject of new or drastically changing concepts, issues, discoveries, conditions, opportunities and problems. Indeed we are the only such undertaking anywhere. As a result, people and organizations from many other places and disciplines have become involved, saying they want to help develop a model that other places and other sectors of basic public need may adapt and use.

For the quality, credibility and legitimacy of our process and the products we produce, it is essential that our process enables, receives, listens to and uses information, viewpoints and suggestions from people and groups representing a broad array of backgrounds, experiences, perspectives and expertise, never neglecting to include those the system is meant to serve – its consumers and end users. Outreach and inclusiveness are essential.

Further, we are nothing but pretty words if we don't focus on providing practical and concrete results in the daily lives of the people we hope to serve. *Therefore, we intend that the ATJ-TBoR be adopted by an authoritative body and made enforceable. We also intend to provide an accompanying document in the nature of an environmental impact statement which identifies the consequences that adoption, enforcement and implementation of the ATJ-TBoR will likely generate not only for the justice system, but for the broader society and its systems and organizations, such as libraries, community and senior centers, infrastructure needs and such.* This document should be the basis for a coherent and balanced plan that will set priorities and shape such consequences. It is intended to stimulate and enable deliberation, decision-making and implementation, and help marshal the societal and political will and resources to accomplish these objectives.

We are reality-oriented. Not only are we working on the development of the principles which will become the actual ATJ Tech Bill of Rights. We are developing products that will help effectuate that Bill of Rights. A few examples are: (1) We are actively engaged in creating an Access to Justice Best Practices checklist template to be used when technology is planned for introduction, implementation or deployment in the justice system. Thus, when designing, planning, developing and before activating the technology, a court or other justice system agency will use the Best Practices checklist template (which will include references to helpful resources) to assure that all relevant access to justice considerations have been taken into account and either properly

addressed or a plan provided that will deal with it properly within an appropriate time; (2) With the cooperation of law schools and other research institutions, we will conduct a survey of the rules, codes and laws by which the justice system operates so as to determine those places where the confluence of new technologies with existing rules of procedure, codes of evidence, confidentiality laws and codes of ethics turns out not to be confluence at all but collision. This effort will identify those places where the courts, legislatures, bar associations, citizen groups, technologists and others should consider making careful and balanced adjustments in advance either of the technology or the rule, code or law so as to avoid potential problems that would discourage user access and damage the quality of accessible justice.

We can help enable persons with disabilities and others with limitations. As we have demonstrated barriers, opportunities and technologies as they relate to people with disabilities, we have also found that many technologies, including streaming technologies, that can assist those we traditionally think of as disabled – persons who are sight impaired, hearing impaired, dyslectic, have difficulty with mobility or coordination – often can also help others we don't think of as disabled, such as people with limited literacy, or who use languages other than English, or are of different cultures or have limited education or have difficulty with attention or concentration, or just plain lack confidence or are intimidated by the machines or the technology.

Besides streaming technologies, we have demonstrated satellites which provide access to underserved and widely disbursed people in very rural areas; kiosks which provide talking information and services in English, Navajo and Hopi to people with an almost entirely oral tradition of communication, and often poorly educated; website readers, voice internet portals and voice and audible e-mails developed for the blind but helpful for many others who are print impaired although not vision impaired; interactive kiosks in the community as well as in courthouses which, among other things, enable the filling out and filing of legal forms in a number of areas such as eviction and domestic violence. These kiosks have easy access audio and video instructions which supplement or supplant print, currently in English, Spanish and Vietnamese.

We are increasingly involving students in our process. The benefits are reciprocal: we mentor and help educate them, and we get the benefit of their fresh viewpoints as well as their efforts. We include not only law students, but students from library schools, schools of public administration, information schools, computer science departments and others.

For a further understanding of the ATJ-TBoR initiative, please explore our website at
www.atjtechbillofrights.org
And read the first edition of our Newsletter at
http://www.atjtechbillofrights.org/newsletters/vol1/issue1/1.1
The second edition is coming in September, 2002.

And please read our First Annual Report to be found in the Documents section of the website.